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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
ROBERT W. SWANSON, ACTING DIRECTOR

LINDA A. WATTERS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: **House Bill 5349**

TOPIC: Long-term Care Revisions

SPONSOR: Rep. Paula Zelenko

CO-SPONSORS: Rep. Kathleen Law, Byrum, Angerer, Spade, Williams, Bennett, Waters, Gillard, Gleason, Clack, Plakas, Donigan, Anderson, Vagnozzi, Leland, Miller, Murphy, Hopgood, Alma Smith, Sak, Meisner, Condino, Sheltrown, McDowell, Byrnes, Kolb, Bieda, Tobocman, Newell, Vander Veen, Green, Garfield, Polidori, Kehrl, Brown, and Lemmons, III.

COMMITTEE: Committee on Senior Health, Security, and Retirement

DATE: February 13, 2006

POSITION

The Office of Financial and Insurance Services supports this legislation.

PROBLEM/BACKGROUND

The long-term care insurance product is a fairly new market when juxtaposed against other insurance products. As more and more long-term care products are being sold, it has become evident that more consumer protections should be adopted for the benefit of policyholders. Clear cut regulations regarding rate-making and disclosures to the purchaser concerning the rates must also be provided to encourage individuals and groups to purchase the long-term care product to help finance their own long-term care needs instead of relying on the state to pay for those needs.

As the long-term care product has evolved and changed along with the companies that write this line of business, the National Association of Insurance Commissioners (NAIC) has amended their Long-term Care Model Law and Regulations to provide needed protections and disclosures. In the six years since the adoption of those revisions, Michigan has not yet revised its laws. Michigan needs to adopt many of the more recent changes the NAIC has incorporated into its model and regulations.

DESCRIPTION OF BILL

The proposed legislation adopts specific aspects of the NAIC Long-term Care Model Regulations. These sections are added to the Long-term Care Chapter (Chapter 39) of the Insurance Code of 1956 (Code), 1956 PA 218.

Section 3906 requires the insurance company to obtain a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy for nonpayment of premium. The applicant can waive this requirement by signing an appropriate form. Notice of lapse or cancellation for nonpayment must be sent 30 days after the premium is due and unpaid on an individual policy and 60 days on group certificates. The policy must be reinstated if the insurer is provided proof that the policyholder was cognitively impaired or had loss of functional capacity before the grace period expired.

Section 3910 requires an offering of an option to purchase a policy or certificate that includes a nonforfeiture benefit. If the person declines the nonforfeiture benefit, the insurer must provide a contingent benefit upon lapse that shall be available for a specified period following a substantial increase in premium rates. The commissioner is required to promulgate rules specifying the type of nonforfeiture benefits to be offered under this section.

Section 3910A requires that a nonforfeiture benefit have coverage, eligibility, benefit triggers, and benefit lengths that are the same as coverage issued without the nonforfeiture benefit. If a group policyholder elects to make the nonforfeiture benefit an option, a certificate will provide either the nonforfeiture benefit or the contingent benefit upon lapse. The contingent benefit is triggered every time an insurer increases the premium rates that result in a cumulative increase of the annual premium equal to, or exceeding the percentage of the insured's initial annual premium as detailed in the proposed language based on issue age. The insurer is required to follow certain protocols when a substantial premium increase takes effect. This section details the specifics of how the nonforfeiture benefit will be structured, administered and paid for, in both the individual and group policies.

Section 3910B allows the policyholder to reduce coverage and lower premiums in a number of ways. They may reduce lifetime maximum benefits by reducing the nursing facility per diem or the home care benefits, or by converting a comprehensive policy to a nursing facility only policy, or a home care only policy. Notice of these options must be provided to the policyholder, as well as the process for reducing the coverage and the premium applicable based on the person's age. These options must be offered if the policy is about to lapse or if there is a premium increase.

Section 3925 requires the insurance company to give an applicant information concerning potential rate increases, detailed past rate increases made by the company for that policy, the premium rate or rate schedules applicable to the policy, as well as other rate disclosure information.

Section 3926 requires that an insurance company provide specific information to the commissioner 30 days prior to making a long-term care policy available for sale. Those pieces of information are: a copy of the required disclosure documents, an actuarial certification, and an actuarial demonstration that benefits are reasonable in relation to premiums, if requested by the commissioner.

Section 3926A is added to apply to policies for individual long-term care policies sold after April 1, 2006, or group policies in place on April 1, 2006. The insurer must provide notice of any pending premium increase to the commissioner 30 days prior to policyholder notification. The notice must include:

1. Information required by section 3925;
2. A qualified actuarial certification that no further rate increases are anticipated;
3. An actuarial memorandum justifying the rate increase with specified information to be included;
4. A statement that renewal premium rate schedules are not greater than new business premium schedules for like policies; and
5. Sufficient information for a commissioner's review.

Details regarding how an insurer determines premium rate increases are prescribed in these new provisions.

Updated projections must be filed for each rate increase implemented on a regular basis. The commissioner has the authority to require adjustments to the premium rate increases.

The commissioner can review contingent benefit plans, projected lapse rates and past lapse rates, or determine if a rate spiral exists in a particular policy form. If the commissioner determines a rate spiral exists, he or she may require the insurer to offer, without underwriting, the option to replace existing coverage with one or more comparable products with specific conditions.

If the commissioner determines that an insurer has exhibited a persistent practice of filing inadequate initial rates, the commissioner may prohibit the insurer from filing and marketing comparable coverage for a period of up to five years, or offering all other similar coverage and limiting marketing of new applications to the products subject to recent rate increases. This condition does not apply to policies or certificates that have long-term care benefits incidental to the policy and that meet certain specifications. Some of these provisions may not apply to a group insurance policy if the policy insured 250 or more persons and the policyholder has 5,000 or more eligible employees, or the employer pays a material portion of the premium.

Section 3941A requires long-term care insurers to develop and use suitability standards for purchasers of the product, train its producers in the use of such standards, and

maintain a copy of the standards and make them available for inspection by the commissioner. The standards must contain:

1. The purchaser's ability to pay for the coverage;
2. The applicant's goals or needs with respect to long-term care; and
3. The values, benefits, and costs of the applicant's existing insurance.

Section 3942B establishes training requirements for producers authorized to sell long-term care insurance in Michigan. The language details specific information that must be found in the training material. The insurer is responsible for maintaining records on those producers eligible to market long-term care insurance.

IT IS ANTICIPATED THAT A SUBSTITUTE WILL BE OFFERED IN COMMITTEE. THE EXPECTED CHANGES ARE:

- Dates used in the bill will be changed from January 1, 2006 to October 1, 2006. April 1, 2006 dates will be changed to January 1, 2007.

- A new section is being added to the bill to require OFIS to report to the Standing Committees on Insurance any NAIC adopted recommendations that are not consistent with provisions in the bill and to recommend if Michigan's statute should be updated to reflect the NAIC action.

- A new subsection (8) is being added to section 3925 to require insurers to provide applicants who have a disability or who are age 61 or older with the current brochure from Michigan's Medicare/Medicaid Assistance Program.

- The producer training requirements (Sec. 3942B) are being moved to Chapter 12. Producers licensed after January 1, 2007 will need eight hours of training before they can sell/market long-term care insurance. Those renewing their license after that date will need 4 hours of continuing education (CE) in this area. These hours will count toward their currently required 24 hours of continuing education. The requirement that insurers provide the training is being removed since the training and CE requirements will be handled under Chapter 12.

SUMMARY OF ARGUMENTS

Pro

Consumer advocates support this legislation because it provides some very beneficial consumer protections. The requirement that companies offer an applicant the opportunity to designate another person to receive payment notices protect the elderly who may find themselves unable to read their mail or make premium payments. In the past, if a person fell ill and could not get their mail, the policy would lapse and they

would end up with no coverage for which they had paid for years. The insurance company must now notify another party of the impending lapse if the person designates another person to receive the notices.

Nonforfeiture benefits and contingency benefits provide very beneficial options to the policyholders. If after many years of paying a long-term care insurance premium, the individual can no longer afford the policy, options will be presented to them other than just letting the policy lapse at a time in their life when they may be getting close to needing the coverage.

The rating disclosure sections allow the applicant to make more informed decisions when purchasing a long-term care policy. They must be made aware of a company's rate history for a particular policy and what anticipated policy increases might be enacted. A more informed applicant could make better decisions regarding their purchases.

Many in the industry as well as consumer groups support the rating requirements as specified in sections 3926 and 3926A. These sections produce standards that give specifics about how policies must be rated when initially marketed and in later years. This language puts all insurance companies on the same footing when they make their initial rating schedules. In the past some insurers would bring a new product into the market with a low price hoping to capture large market share only to find as the policies matured that their products were underpriced and large rate increases were needed to pay benefits. At this older age, policyholders cannot buy a new policy with another company without paying a much higher premium than they would have paid had they initially purchased that company's policy, instead of purchasing the lower rated policy. These two sections provide rate stability to the market.

The suitability standard requirements protect the purchaser who may not entirely understand the purpose of long-term care products or who may not really be able to afford the product. This language places the responsibility on the company and the producer to help an applicant make the best decision.

The producer training requirements protect the consumer by making the producers and companies responsible for understanding the product they are marketing. In today's market place, there are many producers who don't really know how a long-term care product works. They are unable to adequately inform the consumer about the pros and cons of purchasing such a product.

Con

Producers disagree with the training requirements, suggesting they are overly burdensome. It should be noted the newly passed federal legislation regarding Medicaid partnerships with long-term care products requires the states be responsible for assuring that producers understand policies sold under the partnerships and how

they relate to other public and private coverage of long-term care. It would appear some required training is essential at this point.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary: This legislation may impact OFIS' need to review rates for the long-term care product and therefore, may require additional expertise be added to staff.
Revenue:
Comments:

(b) To the Department of Labor and Economic Growth: None known.

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None known.

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

The Department of Community Health may be interested in this legislation.

ANY OTHER PERTINENT INFORMATION

This legislation adopts many parts of the NAIC Model Act and Regulation for Long-term Care Insurance. The long-term care industry and consumer advocates have supported this model. The language in the current model concerning financial disclosure and specific regulations was the product of a long period of negotiation among the regulators, the industry, and consumer advocates. The model was adopted by the

NAIC in 2000. Any suggested change to the financial requirement language would be contrary to standards agreed upon during the negotiation process.

ADMINISTRATIVE RULES IMPACT

Rules can be promulgated to provide for administration of the act.

Linda A. Watters
Commissioner

2-13-06
Date